IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P.No.7339 of 1993

Date of Decision : September 15, 2006.

Jagmohan Singh ..... Petitioner

Vs.

The Joint Director (Mon), Punjab Govt.
Director of Industries and another ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Sanjay Majithia, Advocate
for the petitioner.

Mr.Amit Rawal, Advocate
for the respondents.

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P.S.Patwalia, J. :

Petitioner Jagmohan Singh has filed this writ petition praying for allotment of a plot of 300 sq. yds. at Focal Point, Dhandari Kalan, Ludhiana which was initially allotted to him on 20.2.1988 but thereafter the allotment was cancelled.

The petitioner claims that he migrated to Ludhiana as a result of the 1984 riots. He desired to permanently settle at Ludhiana and therefore

applied to the Punjab State Small Industries and Export Corporation, Chandigarh (hereinafter referred to as PSIEC) for allotment of an industrial plot in Dhandari Kalan, Focal Point , Ludhiana for setting up a hosiery industry. By a letter dated 20.2.1988 the petitioner was intimated that his application for "off the shelf" allotment scheme had been accepted and he had been allotted a plot of 300 sq. yds. at Focal Point, Dhandari Kalan, Ludhiana. Petitioner further states that he also deposited a sum of Rs.3,769/- by a demand draft enclosed along with his letter dated 17.10.1988.

According to the case set up in petition, the petitioner states that he received a letter dated 15.10.1992 wherein it was stated that the PSIEC has decided to restore the allotment of the cancelled plots in various focal points on payment of entire cost of plot in lump sum including normal and penal interest subject to the condition that the unit would come into production within one year. In the said letter the petitioner was required to deposit a sum of Rs.34,465/- before 31.10.1992 on which payment allotment of the plot would stand restored to him. The petitioner submits that the said letter was received by him on 31.10.1992 itself. Therefore on that very date his brother Joginder Singh who was also an Advocate at Ludhiana sent an urgent registered reply/notice to PSIEC that the payment of Rs.34,465/- could not be made on 31.10.1992 as it was Saturday and the letter had been received at about noon. He therefore stated that the last date for the deposit of the amount should be extended or he may be properly guided as to how he could deposit the money. This reply sent by the petitioner through his brother Shri Joginder Singh, Advocate is attached as Annexure P-5 to the petition. When no reply was received to the aforementioned letter, the petitioner again through his

brother sent another letter dated 12.11.1992 stating that since no reply had been received to his earlier letter he is enclosing two demand drafts for a sum of Rs.34,465/- as per demand raised by the Corporation so that allotment in favour of the petitioner could be confirmed.

Petitioner received a reply from PSIEC by a registered letter dated 25.11.1992. The said reply as reproduced in Annexure P-8 of the petition reads as under :-

"No. Not legible/16493
Dated 25.11.92.

Registered

Shri Joginder Singh, Advocate
BV/332 Benjamin Road, Div.3,
Ludhiana.

Subject :- Plot No. K-22 Phase-7, Dhandari Kalan, Focal Point, Ludhiana.

Shrimanji,

Received your registered letter dated 12.11.92 on the above subject and in this connection you are informed that the amount sent to us is not from the allottee and this is the reason why the drafts No.789280 for Rs.23,845/- and draft No.789281 dated 12.11.92 for Rs.10,620/- are returned to you.

Yours faithfully,

Sd/- illegible.

Milkh Officer-1."

A reading of the reply would show that the drafts sent by the petitioner were rejected on the sole ground that they were not from the allottee. On receipt of this letter the petitioner immediately resubmitted the drafts by enclosing them with a letter signed by himself rather than by Joginder Singh. However by letter dated 10.12.1992 the drafts were now returned with the comments that since the drafts had been submitted after 31.10.1992 they were returned and re-allotment of the plot could not be made in the name of the petitioner. It is at that stage that the petitioner approached this Court by way of the present writ petition.

The PSIEC has filed a reply. In the reply it has been stated that the petitioner was allotted plot no.K-22 measuring 300 sq. yds. situated at Dhandari Kalan vide a Letter of Intent for allotment of plot dated 19.8.1988. As per Clause 3 of the said letter, it was to be converted into regular letter of allotment after the Corporation was satisfied about the viability of the project and the necessary financial arrangements. The Corporation states that since the petitioner could not satisfy the Corporation regarding the aforementioned, Letter of Intent was cancelled on 9.6.1989. This order has been attached as Annexure R-2/2 with the reply. The Corporation further submits that keeping in view the liberal policy of the Government to help entrepreneurs and for accelerating the growth of industries in Punjab, the Board of Directors of Corporation decided to restore the allotment of the cancelled plots in various focal points on payment of entire cost of plots in lump sum including normal and penal interest subject to the condition that the unit would come into production within one year. This decision was duly advertised in the `Daily Tribune'. As per the said decision the

application for restoration along with draft of the requisite amount was to reach the Corporation by 31.10.1992. On the merits of the petitioner's claim for re-allotment, the Corporation submits that since the petitioner had already got encashed the earnest money refunded to him by the Corporation, he was not eligible for re-allotment. However it is further submitted that assuming that the petitioner was eligible for re-allotment, the amount was received from the petitioner's advocate on 16.11.1992 and not from the petitioner. It is further stated that the amount was received after the cut-off date. The relevant observations in this regard are as hereunder :-

> *"It is submitted that though the petitioner as per the policy of the Board of Directors was not eligible for the re-allotment but for the argument sake even though it is submitted that he was eligible though not admitting, the letter dated 15th Oct., 1992 was sent through a registered post vide postal receipt No.2323 dated 15-10-1992. The amount referred by the petitioner vide Annexure P-6 was received on 16th of November, 1992 that too not from him but from his Advocate much after the expiry of the cut-out date i.e. 31st October, 1992 which is an admitted fact and as such the petitioner has no cause of action to invoke the extra ordinary writ jurisdiction of this Hon'ble Court."*

I have heard Mr.Sanjay Majithia, learned counsel for the petitioner and Mr.Amit Rawal, learned counsel appearing for respondent no.2, PSIEC.

At the outset it deserves to be mentioned that the possession of the plot in dispute is with the petitioner. The petitioner has produced before me photographs showing some construction on the plot. This fact could not be disputed by learned counsel for respondent no.2.

The only point for determination in the present writ petition is as to whether the petitioner is entitled to re-allotment of the plot in terms of the liberty given by the Corporation as advertised in the Press. The stand that the petitioner was not entitled for re-allotment as he had encashed the earnest money has to be rejected at the threshold. This is for the reason that the Corporation itself had written the letter on 15.10.1992 to the petitioner stating that it had decided to restore all plots of which allotment was cancelled. The petitioner was specifically asked to deposit a sum of Rs.34,465/- by 31.10.1992 so that the plot could be re-allotted to him. This shows clearly that even according to the Corporation the petitioner was entitled for re-allotment of the plot. Still further there is no such qualification in the advertisement issued and placed on record as Annexure R-2/3 that a person who had encashed the earnest money was disqualified under the said decision. Therefore the contention raised that the petitioner was not entitled for re-allotment can not be accepted.

Now while considering the petitioner's case for re-allotment of the plot under the policy the facts as recapitulated above would show that in the first instance the petitioner's money was returned on 25.11.1992 on the ground that the amount was not sent by the allottee but by his counsel. It is only thereafter when the petitioner himself sent the money that the Corporation took the plea that the amount had been sent after the cut-off date and hence the claim was rejected. In this situation learned counsel for the petitioner contends that the letter dated 15.10.1992 was received by the

petitioner only on 31.10.1992 in the noon. He states that the letter was received on 31.10.1992 itself which was a Saturday and it was not possible for the petitioner to have deposited the money on that very date. It is therefore that the petitioner immediately sent a letter through his brother who also happened to be a lawyer seeking a reasonable extension in time for depositing the money. Learned counsel submits that realizing the genuineness of the petitioner's request the Corporation did not reject the petitioner's drafts on the ground that they were submitted after 31.10.1992 rather the drafts were returned on 25.11.1992 on the ground that they had been sent not by the petitioner/allottee but by someone else. He submits that a reading of the letter dated 25.11.1992 stating this fact would show that the delay if any in submitting the drafts, did not weigh with the Corporation. Probably the Corporation had realized in view of the fact that since the letter was received only on 31.10.1992 which was a Saturday, payment could not be made by that very date. Learned counsel submits that it was only thereafter when the drafts were again sent by the petitioner that the Corporation came out with a plea that the same were sent after 31.10.1992 which plea has been repeated in the written statement. Learned counsel submits that this is an after thought. The real reason for rejecting the petitioner's claim was that the drafts were not sent by the allottee. He submits that this reason is totally unjustified. Learned counsel also argues that the petitioner is a riot affected person. He had been uprooted from his original place of residence in the year 1984. He had arrived in Punjab virtually as a refugee and picked up the threads of his life again. He submits that it was with a view to rehabilitate such riot affected persons that the plots were allotted to them unde the “off the shelf” allotment policy. Realizing that the allottees of the plots could not properly establish their

business due to militancy in Punjab and therefore could not deposit the dues in time, a further decision was taken to restore the plots to such allottees on payment of the entire dues outstanding in the year 1992. He submits that in these circumstances the petitioner is entitled to the restoration of the plot and is entitled to get the benefit of the decision taken in the year 1992 even if there has been a few days' delay in the petitioner's depositing the amount. On the other hand learned counsel for the respondents contends that the facts of this case would clearly show that the petitioner could not deposit the money by 31.10.1992. He has therefore lost the right to get the plot re-allotted.

Having examined the controversy I find merit in the contention raised by the learned counsel for the petitioner. A perusal of the letter dated 25.11.1992 returning the drafts submitted would show that the same were returned for the reason that they were not sent by the original allottee. I am of the opinion that once the drafts were sent through an advocate on behalf of his client by a proper letter they could not have been returned merely on the ground that they were not sent by the allottee. The reason ascribed for returning the drafts is wholly arbitrary. In any case the same very drafts were again re-submitted by the allottee, the petitioner herein, under his own signatures. It is at this stage now that the Corporation has rejected them on the ground that they were submitted after 31.10.1992. I am of the opinion that this ground taken at this stage is an after thought. Originally the drafts were rejected on a wholly untenable plea. Delay in submitting the drafts was never the ground for rejecting them in the first instance.

Notwithstanding the aforesaid I am of the opinion that the case of the petitioner for re-allotment cannot be declined even on this plea. On 31.10.1992 itself the petitioner through his counsel wrote a letter that he had

received the letter of the Corporation dated 15.10.1992 asking him to deposit the amount by 31.10.1992. The letter was received at noon on Saturday. The drafts therefore could possibly have not been prepared on that date being a half day for the banks. The petitioner therefore immediately intimated the Corporation on that very date that he should be given some reasonable time to deposit the money. When the Corporation did not respond, on the 12th day itself the petitioner made the drafts and submitted the same to the Corporation. In view of the aforementioned facts, it was not reasonably possible for the petitioner to have deposited the drafts by 31.10.1992 due to the late receipt of the letter of the Corporation. In these circumstances I am of the opinion that the claim of the petitioner could not have been rejected merely on the ground that he did not deposit the money by 31.10.1992.

I am also inclined to take a view in favour of the petitioner keeping in view the fact that the petitioner is a riot affected person. The object of allotting the plots to such families was to rehabilitate them in Punjab. The Government was also conscious that on account of disturbed conditions in Punjab it was very difficult to establish business. It is therefore to encourage the entrepreneurs and accelerate the growth of industry that a decision was taken to restore the allotment of cancelled plots. The petitioner has acted with a reasonable promptitude. Therefore in my opinion the petitioner's case for re-allotment of the plot cannot be rejected merely on the ground that he had deposited the drafts after 31.10.1992.

Before concluding it would be fair to mention that the learned counsel for the respondents had relied upon three judgments in support of his contentions being **(i)** *Food Corporation of India and others vs. Jagannath Dutta and others*, reported as *A.I.R 1993 Supreme Court 1494*,

(ii) *G.Narayanaswamy Reddy (dead) by L.Rs and another vs. Govt. of Karnataka and another*, reported as *A.I.R 1991 Supreme Court 1726* and **(iii)** *M/s Techno Industries Pvt. Ltd. vs. The State of Haryana*, reported as *1992 (1) P.L.R. 418*. In so far as the first judgment is concerned the view taken by the Hon'ble Supreme Court is that normally questions of contractual obligations cannot be gone into in writ jurisdiction. I am of the opinion that the said judgment would have no application to the facts of the present case. The second judgment relied upon is for the proposition that the writ was liable to be dismissed as the petitioner had suppressed some facts. Learned counsel had contended that since the petitioner had not disclosed that his original allotment made in the year 1988 stood cancelled in the year 1989, he was not entitled to any relief. I am of the opinion that the petitioner can not be non suited on this ground. In fact the cancellation of the original allotment is not very relevant to the present controversy as the petitioner's entire case is based on the subsequent decision of the Corporation itself to re-allot the cancelled plots. The last judgment relied upon by the learned counsel is of a Division Bench of this Court. A reading of the facts of this case would show that originally a plot was allotted to the petitioner-company on 20.7.1988. The company was to complete certain formalities within a period of time which was not done and thereafter extensions were granted for condonation of delay. However thereafter the offer of allotment was withdrawn. Once again on the request of the company the Corporation decided to condone the delay on payment of a fee and allotment at a higher rate which was applicable at the time when the delay was condoned. The petitioner had filed the petition challenging the action of the Corporation in seeking a higher rate payable in February 1990 as against the rate payable in September 1988 when the allotment was made.

After going through the peculiar facts of that case this Court declined to interfere in the petition. I am of the opinion that the said judgment also has no application to the facts of this case. Here the petitioner is claiming the re-allotment on the basis of the decision of the Corporation on payment of entire cost of plot in lump sum including normal and penal interest as also restoration fee demanded by the Corporation and in terms of the decision of the Corporation itself.

For the reasons aforementioned this writ petition is allowed. Annexures P-8 and P-10 declining the petitioner's case for re-allotment of the plot in terms of the policy decision Annexure R-2/3 are set aside. The Corporation is directed to re-allot the plot to the petitioner in terms of its policy decision Annexure R-2/3 within a period of three months from the receipt of certified copy of this order. In the circumstances of the case however there shall be no order as to costs.

September 15, 2006 (P.S.Patwalia)
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